

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

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MAR 24 1995

FCC MAIL ROOM

In the Matter of

Elehue Kawika Freemon and
Lucille Freemon
Complainants,
CC Docket No. 94-89
v


File No. E-90-393

American Telephone and Telegraph Company
Defendant.

DOCKET FILE COPY ORIGINAL

Motion for APPEAL

1. Mr. Elehue Kawika Freemon, Complainant, herewith presents and files APPEAL in the above en-titled matter, the same having been fully heard BY ALJ WALTER C. MILLER.
2. APPEAL presented herewith under the provisions of the Federal Administrative Procedure Act and CFR 1.302 TO THE FEDERAL COMMUNICATION COMMISSION REVIEW BOARD OR COMMISSIONER.
3. Dated MARCH 23, 1995.



Complainant Elehue K. Freemon
General Delivery
Big Bear Lake, CA. 92315

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CFR 1.276 (a) (1), Format of Appeal and review of Initial decision, etc.
Section 705 and Section 208 of the Communications ACT,

47 U.S.C. § 605

5 USCS § 556(c) (3),(4), (5), (6), (7), (8).

5 USCS § 555 (a) (e).

5 USCS § 556 (d)

5 USCS § 706 (2) (A)

5 U.S.C.S § 10069c0 and 1009(e)

28 USCS § 144, 455(a)

FRE 1005

FRE 803

FRE 804

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1. Statement of the Case

1. This is an appeal from an Initial Decision [ID] of Administrative Law Judge Walter C. Miller before the Federal Communications Commission dismissing an Eavesdropping and Divulgence complaint against AT&T pursuant to ID, Ultimate Conclusion, page 5, paragraph 9, sub-paragraph 2. The trial court concluded that the plaintiff's action should be dismissed, because the claim deemed to be a falsely captioned and falsely written complaint by Elehue K. Freemon, party to the complaint. The acting Administrative Law Judge Walter C. Miller, also in his personal opinion, called Mr. Elehue K. Freemon a dishonest and deceitful person showing extrajudicial bias and prejudice. The court refused to enter material evidence granted by the Federal Communications Commission and applied restrictions upon complainant's due process without due consideration to "Heighten Duty" or of the Commissions Hearing Designation Order; released August 12, 1994.¹ See 47 CFR 1.267 [ID]; 47 CFR 1.302, Appeal.

¹ Also see Brief for the Common Carrier Bureau [BCCB], CC Docket No. 94-89, December 1994 pages 1 through 4.

2. For the reasons explained below, complainant (appellant) contends the trial court's decision was erroneous and should be reversed.

2. Statement of the questions of law presented

3. The parties in the captioned complaint proceeded to resolve material questions of fact surrounding the American Telephone and Telegraph Company's (AT&T) handling of an operator-assisted telephone call involving the complainants in this case, Elehue Kawika Freemon (Elehue Freemon) and Lucille K. Freemon (Lucille Freemon) (together the Freemons or complainants). The Freemons allege that on May 30, 1988, an AT&T operator intercepted and disclosed the contents or meaning of their telephone conversation in violation of Section 705 of the Communications ACT, 47 U.S.C. § 605. In Section 208 complaint proceeding the issue at hand is whether AT&T's actions violated Section 705 of the Communications Act, and if so, whether the Freemons suffered any measurable harm as a consequence of such violations and are entitled to an award of damages.

4. Over a period of four years the complainants had to wait for action to be brought upon this case by the FCC. The time delay has proven detrimental to this case since Mrs. Lucille K. Freemon suffers from Alzheimer's disease effecting her short- and long term memory and physical health in general.

5. During the informal and the beginning of the formal complaint, Mrs. Lucille K. Freemon was still an active member.

6. On August 12, 1994 the **Hearing Designation Order [HDO12]** was released to designate this case for hearing to resolve material questions of fact.

7. The Commission gave the complainants the burden of proof under "IV. ORDERING CLAUSES", paragraph 11. sub section 1 through 6 and paragraphs 12 through 15.

8. The Hearing Designation Order [HDO12] footnote 6, granted the complainant's motions to accept late-filed pleadings. This included, a one page report on the contact between AT&T operator and the State of Oregon Emergency System with a letter from the Bureau of Emergency Communications for Portland, Oregon, providing clarification of incident #1254.

9. On August 30, 1994 an order by ALJ Miller was issued for the AT&T depositions, in Long Beach, California, of Mrs. Lucille K. Freemon (October 4, 1994) and Mr. Elehue K. Freemon (October 5, 1994).

10. The order stated that each complainant would be sequestered from the other's deposition.
11. On September 30, 1994 at 1:34 p.m. the Portland Seventh Day Adventist hospital's medical reports from May 30, 1988, requested by Mr. Elehue K. Freemon and AT&T for the deposition, arrived at Mr. Elehue K. Freemon mailing address [general delivery] in Big Bear Lake. [Express Mail EF529579205US]
12. Mr. Elehue K. Freemon had already left his home in Big Bear Lake on October 1, 1994, approximately around 11:00 p.m., to attend the deposition in Long Beach, California when the medical reports arrived late in Big Bear Lake but not yet distributed into the general delivery boxes.
13. Before the deadline, Mr. Elehue K. Freemon turned in both depositions unsigned and with permission from Mrs. Freemon. Signing is not required under 1.318 (e) "... the witness was ill ...". Mr. Elehue K. Freemon spoke with Ms. Harris, office manager of Kusar & Harris, Long Beach, CA. and explained to her that he did not want to pay for the notary fees and that Mrs. Lucille K. Freemon was ill. The officer, Joy E. Jones, was unavailable.
14. The testimony in the deposition by former AT&T's operator Ms. Nancy Zolnikov to the material facts showed that a conversation between the complainants did occur, that she had the ability to silence any of the parties from her console on the phone during the conversation and that she did call Portland emergency 911. Ms Zolnikov also stated that Mrs. Freemon had the ability to "flash" her console after it appeared that Mrs. Freemon's call went to "heaven". These were the issues to be clarified in the August 12, 1994, Hearing Designation Order [HDO12] paragraphs 11(1), 11(2), 11(3), 11(4); Ms. Nancy Zolnikov stated to have no physical problems affecting her memory.
15. On December 8, 1994 [released December 12, 1994] a MEMORANDUM OPINION AND ORDER [MOO8] released by Judge Miller "Rulings AT&T's Motion" (paragraph five). Therein he states "**The Trial Judge sincerely believes we should bring this judicial charade to an abrupt halt.**"
16. ALJ Miller's footnote one of MOO8 alleges that complainant Lucille K. Freemon never intended to bring an action against defendant AT&T rather, that her son, Elehue Freemon had forged his mother's signature on at least one occasion, and that he had submitted a false affidavit ostensibly on her behalf in using her as a front for his litigation.
17. In MOO8, foot note two states "Based upon this record, Elehue Freemon's version of the May 30 1988 events can be given no credence or credit whatsoever. This complainant is beyond trust."

18. The evidentiary session was held on November 10, 1994, the judge questioned how Mrs. Freeman's Notice of Appearance and affidavit were prepared. He further asked for the reasons why Mrs. Freeman did not attend the hearing sessions.
19. Mr. Elehue K. Freeman explained the reasons for signing of her Notice of Appearance, in short, he explained that Mrs. Lucille K. Freeman had Alzheimer's disease and was physically not able to attend. Both reasons were rejected by the judge.
20. The Evidentiary Admission Session was held on November 28, 1994. The discussion by AT&T reflected upon the "e" in Mrs. Freeman's signature on her affidavit. AT&T claimed that the "e" was missing in Mrs. Freeman's signature it appeared not to be Mrs. Freeman's.
21. The Motion to Accept 21(b) and supporting discussions and Paragraph 24, correction to late file pleading [911 transcripts] were rejected. **As cited by judge Miller "... the late file pleading is not in evidence. Therefore, there's no factual predicate upon which to base this material. "** This remark was in reference to the Portland Oregon 911 transcripts was granted admission by the commission at HDO12, footnote 6.
22. On December 12, 1994 the Medical report was entered in behalf of Mrs. Lucille K. Freeman and her care takers [family in Long Beach and Mr. Elehue K. Freeman] by Mr. Elehue K. Freeman and rejected by judge Miller.
23. On January 30, 1995 Mr. Elehue K. Freeman proposed Findings of Fact and Conclusions of Law [FCL] were filed with the Commission.
24. On February 15, 1995 Mr. Elehue K. Freeman filed a reply finding [RF] with the Commission.
25. Despite all of the above trial judge Walter C. Miller rejected all of the appellant's arguments and excepted only one, Formal Complaint, of four exhibits to show the burden of proof as indicated at HO12, paragraph 12.

3. Statement of the questions of law presented

26. **Whether Administrative Law Judge Walter C. Miller was in error to dismiss the case of Elehue K. Freeman and Mrs. Lucille K. Freeman in consideration of 5 USCS § 556 (c) (3),(4), (5), (6), (7), (8) by basing his opinions only on faulty assumptions and thereby showing prejudiced and biased judgment.**
27. **Whether trial judge Miller should have denied the medical reports of Mrs. Freeman's physician to be entered and thereby denying the court a proper record**

that would have allowed the court and later the Commission to correctly determine Mrs. Freemon's mental and physical capabilities to continue as a sound party and / or witness during the course of this complaint, under 5 USCS § 556(c) (3), (6), and hence arriving at this erroneous Initial Decision.

28. Whether the trial judge Miller erred in his decision and reasoning in rejecting the Motion to Accept 21(b) and supporting discussions and Paragraph 24, correction to late file pleading [Portland Oregon 911 transcripts] in regards to 5 USCS § 556(c) (3). 5 USCS § 556 (d) burden of proof and in consideration to the Commissions Hearing Order released August 12, 1994, IV ORDERING CLAUSES
29. footnote 6. ²

4. Arguments I, II, III

30. I. Under the case Ohio Bell Telephone Co. and in consideration of 5 USCS § 556(c) (3),(4), (5), (6), (7), (8), Administrative Law Judge Walter C. Miller was in error since his opinions were based only on assumptions , not material fact and/or substantiated facts. This prejudice and extrajudicial bias were the basis for his dismissal of the case of Elehue K. Freemon and Lucille K. Freemon. Administrative Law Judge Walter C. Miller should have promptly dismissed himself under 5 USCS § 556(b).

31. The Initial decision of Administrative Law Judge Walter C. Miller paragraphs 1 through 5, 12, 15, 17 through 20, 22 through 24 and Conclusions of Law paragraph 1, have no relationship to this hearing under the FCC Hearing Order 94-192 released August

² At Hearing Designation Order [HDO12] footnote 6, sentences 5 through 10,

" The complainants also filed two motions to accept late-filed pleadings. The first included a one- page record of the contact between AT&T's operator and the State of Oregon Emergency System. AT&T generally supported this motion to the extent that it sought to admit evidence. The second pleading included for the record a letter from the Bureau of Emergency communications for Portland, Oregon, providing clarification of incident #1254 (complainants' phone call). AT&T did not oppose this motion. **In the interest of a complete record in this proceeding, we grant the complainants' motions.** [bold print added]

12, 1994 [HDO12] nor to the FCC "Brief for the Common Carrier Bureau" December 6, 1994[BCCB].

32. The judge is trying to sidetrack the Commission with irrelevant information listed in paragraph 33, above. ³

33. The procedure for evidentiary use and misuse in an Administrative hearing have been well documented. The appellants have selected **Ohio Bell Telephone Co. and Wasson** due to its use in the courts. ⁴ See footnote 5, 6, 12, 13.

34. At Ohio Bell Telephone Co. it shows if there is an omission of evidence it is like to "condemnation without trial."

35. Without the evidence which was rejected by Judge Miller the Commission is unable to see the whole picture and try this hearing properly, which was Judge Miller's intent to "**bring this judicial charade to an abrupt halt.**" ⁶

36. The Judges state of mind is shown throughout this appeal.

³ At O'Kon v Roland, 247 F.Supp. 751 (1965) [5] (e) "The hearing examiner devoted a substantial portion of his original report to the fact that plaintiff had endeavored to work for 45 days", "He gave no consideration to the provisions of Section 222 which forbid using a "period of trial work" to support a determination ..." in essence the examiner [judge] in this hearing looked the other way even under Appeals counsels [commissions HDO12] guidance and evidence to support such guidance.; [12] The general rule appears to be as stated by the Court of Appeals for the District of Columbia in Sisto v. Civil Aeronautics Board, 86 U.S.App. D. C. 31, 179 F.2d 47, 51 (1949): "The admission of irrelevant or incompetent matter before an administrative agency does not constitute reversible error, if there is substantial evidence in the record to sustain the agency's determination." further at [13] "... the order made is supported by "substantial evidence" which is also "reliable" and "probative".

[10] "The act contains this express provision (5 U.S.C. § 1006 (c) "any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of relevant, imposed of rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantisl evience." See [7],[8] "It the fact that Dr. Osher had daily conatcts with the plaintiff on board ship over a period of from two to three years."

⁴ **Ohio Bell Telephone Co.**, 301 U.S. 292; [2] "A fair hearing is essential to due process; without it, there is condemnation without trial. P. 300." [7] "From the standpoint of due process - the protection of the individual against arbitrary action - a deeper vice than the unreasonable extension of judicial notice is in this case the concealment from the party affected of the particular or evidential facts of which judicial notice was taken by the commission and on which it rested its conclusion. P. 302."

37. Judge Walter C. Miller's assumptions are based on his intentions to railroad this case into a dismissal by systematically discrediting the complainants by whatever means at his disposal and by not addressing the issues of eavesdropping and divulgence. See Judge Walter C. Miller ², Judicial charade⁶

38. The Commission is asked to examine Exhibits Request for Appearance 1 through 4. These represent material facts to show Administrative Law Judge Walter C. Miller's abuse of judicial review and unannounced HDO12 change of venue. See: Miller's statement at MOO28, Ruling 6., footnote 3 ⁵ and his intentions in this hearing at MOO8, Paragraph 5. ⁶

39. The additional Exhibits Request for Appearance [RA] were not presented at the hearing since this was not designated for findings or burden of proof by the Commission at HDO12, IV. ORDERING CLAUSES 11, subsections one through six. See 47 CFR 1.229 (a) (b) (3), (c), (e), (f); 47 CFR 1.243 (j); see Question II this text.

40. Because of the above the appellants must now detour away from HDO12 and explain the extrajudicial bias and prejudice of ALJ Miller.

41. The judges allegations are not based on substantiated fact on record or sound reasoning. At most they are his own biased and or hypothetical opinions. See footnotes 12 and 13

42. The following presents Judge Miller's ID, Conclusions of Law paragraphs;

⁵ Judge Walter C. Miller's misguided and biased opinion of the American Administrative judicial informal and formal complaint system is summed up in his MEMORANDUM OPINION AND ORDER [MOO28] Issued: September 27, 1994, Ruling 6., footnote 3, **"The Trial Judge is well aware that processing these complaints has been a substantial waste of time and the taxpayer's money."**

⁶ On December 8, 1994 [released December 12, 1994] at MEMORANDUM OPINION AND ORDER [MOO8] released by judge Miller "Rulings AT&T's Motion" (paragraph five) he states **"The Trial Judge sincerely believes we should bring this judicial charade to an abrupt halt."**

Footnote one of MOO8 states **" Complainant Lucille K. Freemon hasn't joined in Elehue Freemon's opposition. Moreover, the record shows that Lucille Freemon has never intended to bring an action against defendant AT&T. Rather , her son, Elehue Freemon, has been using her as a front for his litigation. He has forged his mother's signature on at least one occasion , and he has submitted a false affidavit ostensibly on her behalf. "**

Foot note two states **"Based upon this record, Elehue Freemon's version of the May 30 1988 events can be given no credence or credit whatsoever. This complainant is beyond trust."**

43. Paragraphs one and two, have no factual relevance. The complaint is genuine and was true during the time when it was written.³ See Exhibits Request for Appearance [RA] 1 through 4.

44. Paragraph three, though it is true that Mr. Elehue K. Freemon did sign Mrs. Lucille Freemon's Notice of Appearance it was not to represent his mother at the hearing but to give her the option to attend if her health had improved, with permission from her doctor and care takers [family excluding Mr. Elehue K. Freemon] in going to Washington D.C. See Weinstein v. Bradford, 423 U.S. 147⁷

45. In addition there is no provision in the FCC procedures to assist pro se's in light of Mrs. Freemon's physical and mental health.

46. Notification was attempted to the FCC to seek out a procedural remedy before the signing of the document but none was found, except in a broadcasting situation and this case, of course, did not apply.

47. Paragraph four and five, Mr. Elehue K. Freemon did not at any time on record deny or hide the fact that he did sign Mrs. Lucille Freemon's Notice of Appearance.

48. Since Judge Miller has rejected all information relevant to Mrs. Freemon's health, any reasoning of the judges opinion has been based on his own non-medical expertise.^{3[9]}

49. The appellants request that the Commission have [layman Dr.] Judge Walter C. Miller show his medical credentials. This would offset the medical records from Mrs. Lucille Freemon's physicians, which were rejected by the Judge Miller. See Exhibits Request for Appearance [RA] 1 through 4., testimonies from her care takers and acquaintance, TR page 326, line 22 to page 327, line 9 [caretakers - family]; TR page 327, line 15 to 16 showing prejudice.

50. The soundness of any person's character / mind is judged by his spoken and written words and his actions in relationship to his / her words.

51. The appellants, and many who have read the Initial Decision and are familiar with the case, sincerely believe that the judge is not of sound mind and appears to be racially biased.

52. The factual determination of this claim is found below:

⁷ "Although a case may be moot with respect to one of the litigants this court may hear the appeal where there remains a debatable constitutional question to resolve or where the matter appealed is one of great public or general interest." Weinstein vs. Bradford 423 U.S. 147 (1975)

53. Judge Miller has made an error when he disregarded medical experts familiar with Mrs. Lucille K. Freemon's condition over a period of years. These experts did state that she has Alzheimer's disease which would of course taint the credibility of her deposition;⁸

54. Judge Miller has appeared to make himself a medical expert;

55. Judge Miller admits to not have any knowledge on how to proceed with a proper psychological or physical medical evaluation of a patient;

56. Judge Miller has diagnosed whether Mrs. Lucille K. Freemon does or does not have Alzheimer's disease, and what her physical condition is based on a written deposition;

57. Judge Miller does understand that Alzheimer's disease effects the short term and long term memory. The problem is to decide what short and long term memory is for someone with Alzheimer's disease in relation to time. The judge has somehow managed to solve this problem without even seeing the patient in person;

58. Judge Miller has diagnosed Mrs. Lucille K. Freemon in comparison to his mother's Alzheimer's disease;

59. Judge Miller appears to be racially biased toward the appellants; ID page 3 #18 calling Mrs. Lucille Freemon "a Black female", when both are of Polynesian heritage.

60. In conclusion to statements ID Conclusions of Law, paragraphs 4 and 5, Judge Miller has used his position as a judge / prosecutor to abuse his discretion as a judge. Judge Miller has gone beyond the limits of the court and has shown not only extrajudicial bias but racial prejudice of an imprudent level towards the complainants/appellants.⁹

61. Other medical diagnose and misinterpretation has been made by the judge is found in ID 38. The judge has relied on the advice of non medical professionals, the police report and Ms. Nancy Zolnikov's (who was not physically present) to determine

⁸ Just the amount of mail from AT&T and the Comission sent to Mrs. Freemon's Long Beach residence would have alerted any reasonable person that the case was still in progress. If we assume that Judge Miller is correct [and he is not] that Mr. Freemon had not been telling Mrs. Freemon about the case, then he would have had to intercept Mrs Freemon's mail, which is impossible because of his residence in Big Bear Lake at a distance of over 100 miles.

⁹ See: TR page 7, line 11 -20 Judge Millers reference to his mother's Alzheimer's; TR page 111, line 18 to 22 JUDGE MILLERS not medical technician; ID 18 " Black female".

Mr. Freemon physiological condition and has ignored the facts of Mr. Elehue K. Freemon's hospital report ,which are conclusive.

62. Since the judge did also request the clinical hospital reports, which were written in layman's terms (laboratory report , test Alcohol level 81H ,page 2; negative on drugs, page 3) he should have read them to see how much alcohol Mr. Freemon had and if there were any drugs in him as stated at ID Paragraph 38.¹⁰ However ALJ Miller stated in TR page 111, line 18 - 22 that he could not understand these reports without an expert, but yet he felt competent to use Mrs. Freemons deposition to diagnose her not having Alzheimer's, a much more difficult diagnosis to make.

63. The judge misinterpreted Mrs. Freemon's version stating "as corroborated by Lucille Freemon." This statement is based on the fact that according to Ms. Nancy Zolnikov's version Mrs. Freemon never spoke to her son. SEE: AT&T Answers. AT&T Exhibit 8.

64. According to AT&T, Mrs. Freemon could not have known if Mr. Freemon had taken pills or drugs. The clinical medical diagnosis, not psychological diagnosis, in the hospital reports state that Mr. Freemon was within the normal or safe limits of alcohol and had no other drugs in his system and therefore was in no immediate danger.

65. It appears that Judge Miller, though he did not make a determination at TR page 111, line 18 to page 112 line 3 (" He showed no capacity for useful insight and he denied any responsibility for problems. He blames people and situations and circumstances."), he has used it for the basis of his opinion in I D par. 38 through 40.¹¹

66. The version of Ms. Nancy Zolnikovat her deposition of the May 30, 1988 incident is different to her AT&T's Answers carefully prepared by AT&T.

¹⁰ At ID Paragraph 38, " Remember too, that on May 30, 1988, Elehue Freemon was drinking wine and taking sleeping pills. See Tr. 202. and AT&T Ex. 8 at subexhibit B (Police Report). So if it came to accepting Elehue Freemon's version of the 10:30 p.m. telephone call or accepting Nancy Zolnikov's version as corroborated by Lucille Freemon, the choice is clear. Elehue Freemon was simply not in the physical or mental condition to retain and later recall accurate firthand testimony." The version of Ms. Nancy Zolnikov is void of her Deposition under cross examination which is quite different then her version at AT&T's answer. See MOO28 and MOO8.

¹¹ It is generally believed that minority ethnic groups blame others for their plight in this country. Mr. Freemon, without financial assistance, has finished his college and created his own company and has assisted others in his own field when needed.

67. The court has continually erred in making prejudged assumptions the basis for belief from nonprofessionals instead of professionals. The basis of belief are the police report and Ms Nancy Zolnikov , neither of them are medical technicians versus Portland Seventh Day Adventist Hospital laboratory technicians. (Objective facts.)

68. Mr. Elehue K. Freemon's hospital rejected clinical reports showed No misuse of drugs to affective cognitive ability of a person. Of course these reports were rejected by the judge it appears they didn't fit his prejudgements. ³

69. Paragraph six (see Arguments II), seven (see Arguments II) and eight can have no validity due to the facts.

70. II. Under 309 F. Supp. 956 and Parker cases and 5 USCS § 556(c) (3), (6) the trial judge Miller erred when not demonstrating a "heightened duty" when a claimant is not represented by counsel. He should have allowed the medical reports by Mrs. Freemon's physician to be entered.

71. This "heightened duty" would have explained to the court and later the commission the seriousness of Mrs. Freemon's mental and physical capabilities as a party and or witness during the course of this complaint and would have avoided prejudgement against Mr. Elehue K. Freemons good character .as indicated

72. on December 8, 1994 [released December 12, 1994] a MEMORANDUM OPINION AND ORDER [MOO8] released by judge Miller "Rulings AT&T's Motion" (paragraph five) footnotes one and two of MOO8.

73. The courts have held or recognized that when a person appears at an administrative hearing without being represented by an attorney, the hearing examiner is thereupon put under a heightened duty to make sure that all the facts of the case are fully explored, and that a failure on the part of the hearing examiner to perform this duty may result in prejudice to the claimant, thus causing the case to be remanded for further proceedings.

74. This heightened duty was neither shown at the depositions of the appellants nor at Mr. Elehue K. Freemon's hearings in Washington D.C..

75. Administrative Law Judge Walter C. Miller showed inability to seriously address the actual facts of this case namely eavesdropping and divulgence by AT&T as stipulated by the FCC Hearing Order, released on August 12, 1994 and BRIEF FOR THE COMMON CARRIER BUREAU. Objectivity is impaired and this is demonstrated by his extra judicial bias opinions and unsupported assumptions. See Initial Decision of

Administrative Law Judge, Released February 24, 1995 (ID) pages 1 through 5 ;
BRIEF FOR THE COMMON CARRIER BUREAU, December 6, 1994. See footnote 6
[10], 11, 12** footnote; see Exhibits Request for Appearance 1 through 4.

76. The Initial Decision of Administrative Law Judge Walter C. Miller pivots around the following issues: (1) the judges assumption of Mr. Elehue K. Freemon's dishonesty and deceitfulness [which he is not] and (2) not the material and genuine facts of the case as the FCC hearing order has designated.

77. For example the judges comments that (a) Mr. Elehue K. Freemon fabricated everything such as Lucille K. Freemon's affidavit, (b) Lucille K. Freemon never had any intention at any time to become a party to this complaint, and (c) her physicians medical report of Alzheimer's disease was in error and has no foundation. TR page 320, line 14 page 327 line 9 to page 331 line 19 to page 337 line 15 .

78. Further review of Administrative Law Judge Walter C. Miller's comment's to the commission and towards Mr. Elehue K. Freemon on the courts records will show an abuse of judicial discretion, pre judgments and no sign of heightened duty.

79. Admitting them would have allowed the court and later the commission to seriously determine her mental and physical capabilities to continue as a sound party and/or witness, under 5 USCS § 556(c) (3), (6).

80. Issuing the sequestration order against Mr. Elehue K. Freemon, pro se, and Mrs. Lucille K. Freemon during their depositions without regards to 5 USCS § 555 (a) (e), negatively affected their ability to be their own legal representatives in cross examination and the protection of their individual due process. The Commission will find that this action tainted the deposition of Mrs. Lucille K. Freemon and renders it obsolete. See Exhibits Request for Appearance 1 through 4.

81. (1) On September 1, 1994 Mr. Elehue K. Freemon filed and signed his Notice of Appearance. On the same day, with previous express permission from his mother (Lucille K. Freemon), Mr. Elehue K. Freemon also signed her Notice of Appearance. This was the only time Mr. Freemon signed a document in lieu of his mother. To ensure there was no misunderstanding between the Freemons Mr. Elehue K. Freemon provided a Power of Attorney shortly after.

82. (2) The ultimate decision to discontinue Mrs. Lucille K. Freemon's, pro se involvement as a complainant in this case was not Mr. Elehue K. Freemon's, but the

decision of the immediate care takers who are her husband and two daughters in Long Beach , California.

83. (3) After a medical review and advisement by her doctor , Robert H. Frankenfeld, M.D., F.A.C.P., her family (including Mr. Elehue K. Freemon) decided not to expose Mrs. Lucille K. Freemon to any further burdens of this case. See Exhibits Request for Appearance [RA] 1 through 4.

84. (4) The FCC Rules and Procedures [47 CFR] do not have a provision for illness of a pro se case. It appears only broadcasting has such provisions for contingency of serious illness . See Paragraphs 77 and 78.

85. (5) Furthermore mailing communications from the FCC were received late at Mr. Freemon's residence prior to the mailing of the hearing order August 12, 1994, because they were mailed to the wrong address. This gave Mr. Elehue K. Freemon (pro se), not enough time to inform his family and prepare for a decision due to Mrs. Freemon's health.

86. For the above reasons (one through five), the notice of appearance was signed by Mr. Elehue K. Freemon, pro se, with Mrs. Lucille K. Freemon's consent to continue this case on her behalf as much as possible under the law.

87. III. Trial judge Miller erred in his decision and reasoning in rejecting the Motion to Accept 21(b) and supporting discussions and Paragraph 24, correction to late file pleading [Portland Oregon 911 transcripts] in regards to 5 USCS § 556(c) (3); 5 USCS § 556 (d) burden of proof; 5 USCS § 557 (c)(3) (A), the cases Wasson and Cohen.

88. At Wasson the " ... requirement that agency adjudication's provide findings, conclusions and the reasons or bases therefore on all material issues of fact and law." ¹²

89. Further at 309 F.Supp. 956 [8] the appeals court issued that he should " obtain such additional evidence as is relevant to the issues involved herein; *** ."

¹² Wasson 558 F.2d 884 " The purpose for requiring findings of fact is to furnish parties and the reviewing court [comission] with a sufficiently clear basis for understanding the premises used by the tribunal in reaching its conclusions of law." It is the "path "of the court to its findings that is in issue here. [insert and brackets added] See Section 8 of the Admin. Proc. Act, 5 U.S.C.(c)(3)(A); See also Northeast Broadcasting Inc. v FCC., 130 U.S. App. D.C. 278, 400 F.2d 749 (1968); Colorado Interstate Gas Co. v. Federal Power Comm'n, 324 U.S. 581.595.

90. The material facts requested by the commission have been brought forth by the complainant(s) [appellant] to fully answer the requested questions at HDO12 paragraphs 11 through 12 [as per evidence].¹³ See footnote 12

91. Judge Miller has made up hypothetical questions instead of relying on the evidence granted by the commission at HDO12, by an Oregon State agency 911 transcripts and the reports of medical experts about Mrs. Freemon's health condition.

See TR page 327, lines 15 to 16, MOO28, MOO8 extrajudicial bias and prejudice; see footnote 6, 11,13.

92. This occurred during the deposition and throughout the hearings in Washington D.C. See footnote 2, HDO12, see exhibit 4, Mrs. Lucille K. Freemon medical report, issued original by Mr. Elehue Freemon (husband) through Mr. Elehue K. Freemon (son) at hearing, all reject or ignored by Judge Miller. See Exhibits Request for Appearance 4, Medical Report for Ms. Lucille K. Freemon..

93. Judge Miller has erred and lied to Mr. Freemon and the Commission in stating that the Commission never "granted the complainants motions " for the 911 transcripts to be on the record. See HDO12. footnote 6; see: TR pages 85, line 19 to line 25; TR pages 87, line 1 to line 11; TR pages 87, line 1 through page 92 line 1, 911 rejected [page 91, line 11 to 25]; TR page 92, lines 5 through 21, Mr. Elehue K. Freemon objections cutoff; TR page 92, line 17 through 18, 911 transcripts " ... that has not been established on the record." stated by Judge Miller.

94. AT&T objected and concluded with Judge Miller to the effect that the 911 testimony was never entered. Not a mistake but a lie. See TR page 88, line 1 to line 8; HDO12. footnote 6 AT&T's blunted regard for the truth and material facts "granted"

¹³ At Stewart v Cohen 309 F.Supp. 949,957 (1970), page 956, [8] The examiner's duty was especially clear here where the Appeals Counsel had directed that he should " obtain such additional evidence as is relevant to the issues involved herein; *** ."

[9, 10] hypothetical question, " The form of hypothetical question which the examiner used left out material facts favorable to the plaintiff, as pointed out above. Errors on evidentiary rulings are not usually grounds for upsetting an administrative determination, but the effect of the omissions here was so substantial as to make the examiner's action arbitrary and capricious. 5 U.C.S. § 706(2) (a). It is no answer to assert, as the government does, that the vocational expert had been given the entire record. The hearing examiner's hypothetical question indicated that the only material portions of the record were those which he enumerated in the question.

by the commission; also see Judges Exhibit III, pages 30, line 9 through page 12, identifying Mr. Freemon Nancy's deposition exhibit 5 [page 32, line 22 to 25].

95. The appellant would like to note that this exhibit 5 was never seen by Ms. Nancy Zolnikov. Yet it assumes that Ms. Nancy Zolnikov had changed her testimony from AT&T's Answer [AT&T exhibit 8, paragraphs 27 to 31]. This letter to Mr. Thomas D. Wyatt, Chief, Formal Complaints and Investigations Branch, was to mislead the Commission. The exhibit was written by Mr. Peter H. Jacoby attorney for AT&T. See Judges Exhibit III, pages 31, line 3.

96. Why was not Judge Miller's ethical examination not put to the test here as put to the test against Mr. Freemon? Ignored again by the Judge in favor of a corporate lawyer with a degree versus a Pro Se that intentionally misspells words. It does appear that Judge Miller has a flair for mistakes and prejudice against pro se's in general. This is dangerous to the American public and the any agency that he has and will preside over in the

97. future. See MOO28, MOO8, 5, 6 RA exhibit one

98. Ironically, Judge Miller has used the deposition of Mrs. Lucille K. Freemon who allegedly has Alzheimer's disease and compared it with Ms. Nancy Zolnikov's testimony in AT&T's Answers and yet he does not mention the full text of Ms. Nancy Zolnikov's deposition under cross examination in his ID. Judge Miller has treated Ms. Nancy Zolnikov's deposition in the same way he has treated the 911 transcripts (both material facts), he ignored them almost in their entirety. See footnote 11 [9, 10]

99. Again the importance of the 911 transcripts and Ms. Nancy Zolnikov's deposition, material facts, are shown below:

100. The test at Wasson clearly states a path has to be followed in an investigation for the reliability of material facts. We will use ID 32 and 33 as an example to show the hypothetical reasoning with which Judge Miller discredits himself.

101. **ID 32.** " Ms. Zolnikov then connected the call to complainant Lucille Freemon, and announced that Mr. Freemon was trying to place a collect call."

102. Was there a conversation?

103. Judge's answer No, he does not address the question.

104. Complainant's answer is Yes.

105. **At TR page 72 line 7 to page 73 line 9 there was a conversation between complainants for an undetermined number of minutes before**

Ms. Zolnikov returned to the complainants, per Ms. Zolnikov's testimony.

106. Fact: The path "conversation established" HDO12 para.11 (1, 2)
107. per Ms. Zolnikov's testimony TR page 72 line 7 to page 73 line 9
108. AT&T Exhibit 7 Affidavit Mrs. Freeman, FEB. 9, 1989, page 1 of 2
109. AT&T Exhibit 7 Statement of Events, Mr. Freeman , Para. 2;
110. or
111. Hypothetical reasoning by the judge
112. Judges Ex. 1, pp. 199-200; 210 Mr. Freeman;
113. Mr. Freeman mentions a conversation had started, pp. 200 line 6 to 23 (ignored by judge); pp. 200 line 10 to 12 (eavesdropping is done in secrecy) in this instance it appears through a head phone and switchboard console. The 911 transcripts would establish this fact, denied by judge.
114. Judges Ex. 2, pp. 71-73, Mrs. Freemons; mentions there was a conversation; consented to help Mr. Elehue Freeman based only on what the operator had said to her, not fact.
115. Judges Ex. 3, pp. 23 N. Zol. ; he does not address the question at HDO12 1 and 2 at page 23 line 18 and 19 "She (Ms Zolnikov) flashed, and we go back and she (Ms. Freeman) says, ... ", Hypothetical question was never applied proper here. An example, if we assume Who "go back" and from where, etc., except judge appeared to have has purposely ignored any possibility and limits his evidentiary search for the truth in his own Judges Exhibit I, II, III
- 116. (cont. ID 32.) " Mr. Freeman never heard Ms. Zolnikov say anything after Ms. Zolnikov announced the call."**
117. Was there an interception ?
118. Judges answer : No , he does not address the question.
119. Complainants answer : Yes,
120. At judges Ex. 3, pp. 23 line 16 to 19 NZ, NZ states at line 18 " When she flashed. You know, you get a flashing light. She flashed, and we go back... " . " We " appears to mean operator(s) return to open line.
121. fact: path: flash back Judges Exhibit 3 page 23 line 18, 19,
122. per Ms. Zolnikov's testimony page 73 line 2 - 9 (flash-back);
123. AT&T Exhibit 7 Affidavit Mrs. Freeman, FEB. 9, 1989, page 1 of 2;
124. AT&T Exhibit 7 Statement of Events, Mr. Freeman , Para. 3.
125. Fact: The path " interception occurred" HDO12 para.11 (3, 4)
126. per Ms. Zolnikov's testimony TR page 72 line 7 to page 73 line 9

127. AT&T Exhibit 7 Affidavit Mrs. Freemon, FEB. 9, 1989, page 1 of 2
128. AT&T Exhibit 7 Statement of Events, Mr. Freemon , Para. 2
129. or
130. Hypothetical reasoning by the judge continues to be the same.
131. Judges Ex. 1, pp. 199-200; 210 Mr.. Freemon; Judges Ex. 2, pp. 71-73 Mrs. Freemon; Judges Ex. 3, pp. 23 NZ ; he does not address the question at HDO12 (3, 4)
132. **(cont. ID 32.)**" Mr. Freemon never heard Ms Zolnikov say anything after Ms. Zolnikov announced the call." [The judge has eliminated important facts that a conversation existed and that Ms. Zolnikov had to come back or stayed on the line, in some way or another. Is this comment before or after the conversation? The judge has eliminated this important fact, which is not surprising . There is no guessing to this part of the puzzle. The eavesdropping would have occurred here, as mentioned already the conversation has already occurred, so its after.]
133. Finally, " flash backs " have ceased to be on a resident line for over ten years in California and Oregon prior to this telephone conversation on May 30, 1988. The computers have not allowed this to happen as per Ms. Nancy Zolniko at Ex. 3, pp. 81, line 2 " It's gone to heaven " meaning the operator cannot go back to the original line; [releasing the line pp. 81, line 1 to 5 and line 22 to 25; pp. 88 line 25 to page 89 line 7.]
134. Fact: per Ms. Zolnikov's testimony page 73 line 2 - 9 (flash-back)
135. AT&T Exhibit 7 Affidavit Mrs. Freemon, FEB. 9, 1989, page 1 of 2
136. AT&T Exhibit 7 Statement of Events, Mr. Freemon , Para. 3
137. (cont. ID 32.) When Zolnikov indicated to Lucille Freemon that Mr. Freemon appeared to need medical help, Mrs. Freemon gave Ms Zolnikov Mr.,Freemon's full name and expressly authorized Ms. Zolnikov to seek assistance for her son.
138. What was said by Mrs. Freemon to indicate drugs, alcohol and strung out. Neither Ms. Zolnikov or Mrs. Freemon spoketo each other about drugs, alcohol and strung out, only the complainants mentioned that on the telephone.
139. The last link appears to be in the hands of the commission.
140. The 911 transcripts were never allowed because this would have discredited the derailing of this case by Judge Miller, extrajudicial bias, prejudice, discrimination. See footnotes 6, 11 and 12; see paragraph 95 this text.
141. Therefore Judge Millers findings with respect to omissions of facts is " so substantial as to make the examiner's (judges) action arbitrary and capricious.", under 5 USCS § 706 (2) (A).
142. The judge attempts to address HDO12 issue 2 by addressing other phone calls not on record as noted at ID 36 also see Freemon Ex. 3 rejected.

143. In ID 35 to 37 the judge stated " There is still the distinct possibility that he has been describing the wrong telephone call." There was never any doubt between AT&T, the appellants or the commission which telephone call was at issue this only exists for the judge.

144. By not following a proper investigating "path" the Judge (he confessed this
145. fact) has excluded himself as a sane and reasonable person which is needed to apply fairly the rules and Regulations of Administrative Law, 47 CFR and HDO12. See footnotes 11, 12, 14

146. The call had certain aspects that identified itself. The call took place at approximately at 10:30 p.m. and the same call was immediately transferred to the 911 operator. The crux of Judge Miller's determination is based on the Freemons never speaking to each other when the operator Ms Nancy Zolnikov came on line. The question is how did the information get to the 911 message taker Ms . Sharon Lampl ?

147. Both versions of Ms. Nancy Zolnikov and Mrs. Freemon claim that they never spoke of any drugs or alcohol. Is this why Judge Miller has rejected the 911 transcripts and not used Ms. Nancy Zolnikov deposition. See MOO28, MOO8; Hypothetical reasoning by the judge see footnote 6,11. 12.

148. Ms. Nancy Zolnikov's testimony in her deposition under cross examination has stated that a telephone conversation had ensued between Mr. Freemon and Mrs. Freemon. See judges Exhibit III Ms. Zolnikov deposition ; appellants Proposed Findings of fact and conclusions, Page 2, line 5 through page 3, line 19, quoting from Ms. Zolnikov's deposition.

149. It should be noted that both cases Wasson and 309 F.Supp. 956, 957 concluded in agreement that " ... the absence of required findings has been fatal to the validity of agency decisions.", " Errors on evidentiary rulings are not usually grounds for upsetting an administrative determination, but the effect of the omissions here was so substantial as to make the examiner's action arbitrary and capricious." See 5 § U.S.C. 706 (2) (A).

150. This judge has denied the right of the appellants to due process in throwing out the material facts, even when they were properly entered by Judge Miller himself then ignored.

5. Conclusion

151. The decision for the Commission is not whether Mr. Elehue K. Freemon assisted in giving Mrs. Lucille K. Freemon a chance, with her permission, to continue as a full

active complainant in this FCC hearing, but the Commission has to decide whether Judge Miller is competent in his role as a judge to have issued a fair and just dismissal.

152. The Commission's decision to make is about the sanity of this man who has made himself a medical expert, taken the law into his own hands, appears to believe that only people with money (who can afford a lawyer) should defend themselves in a court of law in the United States and/ or should be rudely treated by the court.

153. To show his wrongful view of our judicial system Judge Miller has abused his judicial discretion by ignoring material evidence, rejecting granted evidence by the Commission, stating it had not [a lie], showing racial discrimination (in his statements and actions) and extrajudicial bias. These actions have carried through out the hearing case and should speak for themselves. See MOO28 and MOO8, and see ID in its entirety; [unfortunately we can't put all of the erroneous judges comments into this appeal due to the volume. The appellant(s) can only suggest to read the entire TR vol. I, II, III and judges orders and memorandums.]

154. The judge has stated that Mr. Elehue K. Freemon has "no insight" and does not listen to anyone. What does this mean? Where in the record does this have any bearing on this case of eavesdropping and divulgence? These types of statements and the actions derived from these comments have tainted this case unfairly, by destroying Mr. Freemon's character and taking the attention away from the main issues, (HDO12).

155. Does a person have to be a lawyer or a college professor, etc., to realize that it is against the law to be forcibly taken out of your home, violating due process and a citizen's right of privacy on the telephone in his /her own home because you're breathing hard and forgot a telephone area code, just because of a telecommunication carrier policy.

156. Again what does the judge mean when he states "... that disturbed me because --- I guess -- it, it disturbed me as much, Mr. Williams, as somebody getting a million and a half dollars and spilling a cup of coffee on them. That kind of -- that -- it's that kind of nonsense that causes me problems."¹⁴ **Is this how the judge compares a case of spilled hot coffee to** a case of police brutality or eavesdropping and divulgence to be the same? This judges biased "insight" is an embarrassment to the American public in general. 5, 6, 12

157. This case also appears to be "Ripe" due to the fact that imprisonment has ensued and loss of business, because the right of consent has been violated (Public Law of Consent not governed by FCC) by AT&T's company policy and its operator over Americas telephone system through the misuse of a State Law and Emergency agency.

¹⁴ See TR 347 line 24 to page 348 line 25.

158. Finally the dirty hand that AT&T has played in this case to suppress genuine evidence from their own deposition and from the commissions HDO12, is unlawful in any court of law. ¹⁵

159. This attempted to "hoodwink the commission" by Judge Miller and AT&T is disreputable.

160. Though Mr. Elehue K. Freemon may not understand many of the simple definitions such as court case and hearing case or the limitations of the power of attorney and his rights and or privileges that may be extended towards complaints in pro se, when a mistake had been made he spoke up without hesitation and didn't try to hide the truth again and again as Judge Miller and AT&T have done.

161. We the appellant(s) request that the commission ask for the burden of proof that AT&T and the Judge Miller didn't suppress the 911 transcripts evidence granted by the commission through deception and the lack of "heighten duty".

162. Further to prove that the "e" in Mrs. Lucilles K. Freemons name on the her affidavit is there on the line and qualify [Dr.] Judge Millers diagnosis that Mrs. Lucille K. Freemon does not have a acute case of Alzheimer disease.

¹⁵ Judgment 5 § 555, Rule 3; The American Bar Association has stated well what society is entitled to expect from judges.

"The trial judge should be the exemplar of dignity and impartiality. The judge should exercise restraint over his or her conduct and utterances. The judge should suppress personal predilections, and control his or her temper and emotions. The judge should not permit any person in the courtroom to embroil him or her in conflict, and should otherwise avoid personal conduct which tends to demean the proceedings or to undermine judicial authority in the courtroom. When it becomes necessary during the trial for the judge to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, the judge should do so in a firm dignified, and restrained manner, avoiding repartee, limiting comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining from unnecessary disparagement of persons or issues." **Dignity and impartiality**, ABA Standards for Criminal Justice, 2d ed. 1980, § 6-3.4. [though this is not a criminal case does a demeanor of a judge differ in the eyes of the public it serves ? ... **NO**], see U.S. v Frazier, C.A. 6th, 1978, 584 F.2d 790, 794.

The complainant, Mr. Elehue K. Freemon, implores ... request, that the Commission review the court reporters tapes to hear for themselves the demeanor of this judge Miller and AT&T [as attorneys] to understand fully how this hearing is a step away from a Miscarriage of Justice due to extrajudicial bias and unethical behavior by AT&T attorneys.

163. The commission would fail in its own endeavor to resolve this case, if the case is not reviewed in its entirety due to the numerous blatant and unethical errors made by AT&T and ALJ Walter C. Miller.



Elehue K. Freemon, Appellant

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Date: March 23, 1995

Exhibit I Evelyn Freemon